

BEFORE A HEARING OFFICER BY  
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER  
OF THE STATE BAR OF ARIZONA,

Nos. 02-1526, 02-1954, 03-0103  
03-1015

JOHN R. ROBERTS, JR.,  
Bar No. 019966

RESPONDENT.

HEARING OFFICER'S REPORT

**PROCEDURAL HISTORY**

Probable Cause Orders were filed on September 17, 2003 and November 21, 2003. A five count Complaint was filed on November 26, 2003. Respondent filed an Answer on December 29, 2003. The parties filed a Tender of Admissions and Agreement for Discipline by Consent (Agreement) and a Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum) on March 22, 2004. No hearing has been held. It is unknown if the Complainants have been notified of this Agreement.

**FINDINGS OF FACT and CONCLUSIONS OF LAW**

1. Respondent was admitted to practice in Missouri in 1995 and in Arizona on October 25, 1999. On April 25, 2003, the Arizona Supreme Court summarily

1 suspended Respondent for failure to pay State Bar dues, and Respondent remains  
2 a suspended member of the State Bar.

3  
4 **COUNT ONE (02-1526)**

5 2. Respondent conditionally admits that on or about March 5, 2002, client  
6 John Vardian retained Respondent to represent him in a dissolution proceeding.  
7 Mr. Vardian paid Respondent \$4,000 on March 7, 2002, and \$2,000 on June 14,  
8 2002, for a total of \$6,000 for the representation.

9  
10 3. In June 2002, Respondent's father became ill necessitating Respondent's  
11 return to Missouri. A hearing on temporary orders was scheduled during the time  
12 Respondent was absent. Respondent contacted the court and had the hearing  
13 reset to 9:30 a.m., June 17, 2002. Respondent was with his father and  
14 Respondent failed to attend for a teleconference hearing on June 17, 2002.  
15 Thereafter Respondent did not return Mr. Vardian's phone calls. Mr. Vardian  
16 terminated Respondent on or about July 12, 2002.

17  
18  
19 4. Respondent returned the client file. On or about September 11, 2002,  
20 Respondent refunded \$2,000 to Mr. Vardian. However, Respondent failed to  
21 return remaining unearned fees to Mr. Vardian. Respondent claims that he  
22 performed at least \$3,100 of services for Mr. Vardian, leaving as much as \$900 of  
23 unearned fees that were not refunded to Mr. Vardian. Respondent agrees to  
24 submit the issue of the amount of fees owed to Mr. Vardian to fee arbitration.  
25

1 5. Respondent's conduct in Count One violates the Rules of Professional  
2 Conduct and/or the Supreme Court Rules because he failed to diligently represent  
3 his client, failed to keep his client informed regarding the status of his case, failed  
4 to appear for a scheduled hearing, and failed to return unearned fees to his client.  
5

6 **COUNT TWO (02-1954)**

7 6. Dr. Dennis Kirsten, a third-party medical provider, referred to Respondent  
8 a patient, Nicole Beardt, who was injured in an auto accident. Dr. Kirsten's fee  
9 for medical services provided to Ms. Beardt was \$2,500. Dr. Kirsten submitted a  
10 lien form to Respondent, but Respondent failed to sign it.  
11

12 7. On or about August 5, 2002, Respondent negotiated a settlement in the  
13 amount of \$7,500.00 on behalf of Ms. Beardt, received the settlement funds,  
14 deposited the funds in his trust account, and disbursed \$3,500.00 to Ms. Beardt  
15 without paying Dr. Kirsten any of the \$2,500.00 fee for medical services that he  
16 provided to Ms. Beardt.  
17

18 8. One week after the settlement, Dr. Kirsten contacted Respondent by phone  
19 regarding payment for the medical services that he rendered Ms. Beardt.  
20 Respondent informed Dr. Kirsten of the settlement. Respondent told Dr. Kirsten  
21 that he would send him a check, but Dr. Kirsten never received payment from  
22 Respondent. Respondent sent Dr. Kirsten a check, but apparently it was sent to  
23 the wrong address and did not reach Dr. Kirsten.  
24  
25

1 9. Later, Respondent agreed to meet Dr. Kirsten and hand-deliver the check,  
2 but when Dr. Kirsten called to confirm the appointment, Respondent never  
3 returned the call. Respondent never paid Dr. Kirsten any of the \$2,500.  
4

5 10. Respondent's conduct in Count Two violates the Rules of Professional  
6 Conduct and/or the Supreme Court Rules because he failed reimburse a medical  
7 provider for services rendered from settlement funds that Respondent received on  
8 behalf of his client.  
9

### 10 COUNT THREE (03-0103)

11 11. On or about January 17, 2003, the State Bar received a non-sufficient  
12 funds notice on Respondent's Bank of America Arizona Bar Foundation client  
13 trust account. The notice indicated that on December 12, 2002, check #1140 in  
14 the amount of \$24.67 attempted to pay against the account, and on December 26,  
15 2002, check #1141 for \$133.52 attempted to pay against the account. Both items  
16 were returned due to insufficient funds. At the time each check attempted to pay,  
17 the balance on the account was negative \$707.74. See Exhibit A at p. 3, Report of  
18 Staff Examiner.  
19

20  
21 12. On or about February 25, 2003, the State Bar staff examiner received a  
22 second non-sufficient funds notice on Respondent's trust account. This notice  
23 indicated that check #1141 for \$133.52, check #1143 for \$57.64, check #1145 for  
24 \$11.69, check #1146 for 322.10, and check #1147 for \$19.36 attempted to pay  
25

1 against the account on December 31, 2002, January 8, 2003, January 10, 2003,  
2 and January 14, 2003, respectively, while the account still had a negative balance.  
3 All items were returned and the bank subsequently closed the account on January  
4 29, 2003. *See Exhibit A at p. 3.*

6 13. On information and belief, Respondent deposited Mr. Vardian's first  
7 check [see Count One, *supra* at ¶ 2] for \$4,000 on March 7, 2002, and the second  
8 check for \$2,000 on June 14, 2002. On or about July 12, 2002 Respondent  
9 should have had approximately \$2,900.00 of Mr. Vardian's money in the trust  
10 account; but, according to the bank records, the account contained only \$62.10 on  
11 that day. *See Exhibit A at p. 4.*

13 14. On information and belief, on or about August 5, 2002, Respondent  
14 deposited the \$7,500.00 settlement check for Nicole Beardt, [see Count Two,  
15 *supra* at ¶¶ 6-10] into the trust account. On or about August 6, 2002, Nicole  
16 Beardt received \$3,500.00 for her portion of the settlement. On September 3,  
17 2002, the balance of the trust account fell below the \$2,500.00 that was still owed  
18 to Dr. Kirsten and the \$900.00 in unearned fees that Respondent still owed Mr.  
19 Vardian [see Count One, *supra* at ¶ 4]. *See Exhibit A at p. 5.*

22 15. On September 11, 2002, Respondent sent a \$2,000 refund check to Mr.  
23 Vardian [Count One, *supra* at ¶ 4]. Because the trust account contained less than  
24  
25

1 the amount Respondent owed Mr. Vardian and Dr. Kirsten, the \$2,000 refund  
2 check to Mr. Vardian contained funds that were owed to Dr. Kirsten.

3 16. The trust account bank records reflect disbursements in the amount of  
4 \$2,359.51 to various retail establishments that are unaccounted for as payments to  
5 clients or court costs related to representation. See Exhibit A at p. 5.

6 17. Respondent's conduct in Count Three violates the Rules of Professional  
7 Conduct and/or the Supreme Court Rules because he:  
8

9 a) failed to safeguard funds in his client trust account by allowing the  
10 amount in the account to fall below the total amount of funds in which his clients  
11 or third parties retained an interest. The trust account records show deficiencies  
12 in individual client accounts from July 19, 2002, through January 29, 2003, the  
13 day the account was closed. Dr. Kirsten had negative balances in the trust  
14 account due to disbursements that were made from the trust account for Mr.  
15 Vardian who did not have offsetting funds in the trust account. Therefore, funds  
16 on deposit in the trust account were converted to cover obligations of others with  
17 claims on funds the account;  
18

19 b) failed to maintain and retain complete and appropriate records for his  
20 trust account for a period of five years;  
21

22 c) failed to respond in writing to the charging letter from the State Bar.  
23

24 Additionally, Respondent admitted in his letter dated April 30, 2003 that he lost  
25

1 Complainant John Vardian's [see Count One, *supra* at ¶¶ 2-5] trust account  
2 records when he moved his computer, and that he threw out his handwritten notes  
3 after inputting them into the computer;

4  
5 d) failed to exercise due professional care of client property by  
6 converting client funds for his personal or other use (e.g., payments made to  
7 clients with funds belonging to other clients);

8  
9 e) failed to disburse funds from his client trust account on pre-  
10 numbered checks, *see* Exhibit A at p. 6, and;

11 f) failed to maintain proper internal controls within his office to  
12 adequately safeguard funds on deposit in the trust account.

13  
14 **COUNT FOUR (03-1015)**

15 18. Gary W. Pederson and Curtis Walker, officers or members of Ocotillo  
16 Investments, LLC, ("Ocotillo") retained Respondent to assist them with recovery  
17 of \$33,750 on a promissory note. Respondent attempted to resolve the dispute  
18 through negotiations.

19  
20 19. On October 12, 2001, Respondent filed a Complaint encaptioned *Ocotillo*  
21 *Investments Southwest, LLC. v. Creative Auto Wash, Inc., Douglas M.*  
22 *Grubenhoff, et al.*, No. CV2001-017819, Maricopa County Superior Court, on  
23 behalf of Ocotillo with the understanding that after the suit was filed, that  
24 Ocotillo would secure the assistance of new counsel.  
25

1 20. Respondent was paid a \$1,500 fee for preparation of the Complaint  
2 against the representation of Ocotillo.

3 21. On information and belief, after filing a Complaint for Ocotillo on the  
4 promissory note, Respondent intended to withdraw, and obtained verbal  
5 agreement of another attorney, Donald Heck, to assume responsibility for the  
6 case. Mr. Heck originally referred the Ocotillo matter to Respondent. However,  
7 Mr. Heck failed to file the notice of substitution of counsel. The case file and  
8 copies of discovery requests were forwarded to Mr. Heck by Respondent and  
9 counsel for the defendant in the *Ocotillo Investments* case.  
10  
11

12 22. While Respondent remained counsel of record on the case, he failed to  
13 file or cause to be filed preliminary disclosure statements, failed to respond or  
14 cause responses to be made to opposing counsel's interrogatories, failed to  
15 respond or cause responses to be made to opposing counsel's request for  
16 admissions, failed to respond or cause response to be made to defendant's request  
17 for a summary judgment, and failed to communicate with his clients, opposing  
18 counsel, or with the arbitrator.  
19  
20

21 23. As a consequence of Respondent's conduct, on or about February 28,  
22 2002, the arbitrator filed an award dismissing the Ocotillo Complaint and  
23 sanctioning Mr. Pederson and Mr. Walker in the form of an award of \$7,370.00 in  
24 attorney fees plus \$96.00 in costs.  
25



1 24. Although he was requested by his clients to do so, Respondent has not  
2 refunded any of the fee that was paid to him. Follow-on attorney Donald Heck  
3 has agreed to reimburse defendant Douglas M. Grubenhoff for the \$7,370.00 in  
4 attorney fees plus \$96.00 in costs awarded against Messrs. Pederson and Walker.<sup>1</sup>  
5

6 **COUNT FIVE (03-1015)**

7 25. The State Bar dismisses Count Five of the Complaint alleging that  
8 Respondent failed to cooperate with the State Bar's investigation.  
9

10 **CONDITIONAL ADMISSIONS**

11 Respondent, in exchange for the stated form of discipline, conditionally  
12 admits that the conduct as described in Counts One, Two, Three, and Four  
13 violates Rule 42, Ariz. R. S. Ct., specifically, ER 1.2, 1.3, 1.15(a) and (b),  
14 1.16(d), 8.4 (d), and Rules 43(d), and 44(b)(4), Ariz. R. S. Ct.  
15

16 **DISMISSED ALLEGATIONS**

17 Regarding Counts One and Four, the State Bar conditionally admits that it  
18 may not be able to prove by clear and convincing evidence that Respondent failed  
19 to keep his clients reasonably informed regarding the status of their cases.  
20

21 Regarding the allegations in Count Three, if this matter went to hearing the  
22 State Bar would argue that Respondent knowingly converted client funds for his  
23

24  
25 <sup>1</sup> Donald Heck was disciplined (probation and LOMAP) as a consequence of his involvement  
in the *Ocotillo Investments* matter. File No. 03-1628. No order of restitution issued against Mr.  
Heck in that matter.

1 own use and that the presumptive sanction should be disbarment. Respondent  
2 would argue that he did not intend to injure his clients and Dr. Kirsten, but that as  
3 a consequence of his personal or emotional problems he failed to identify more  
4 appropriate means of satisfying his immediate personal needs. In exchange for  
5 Respondent's agreement to settle these matters the State Bar conditionally agrees  
6 that Respondent did not knowingly convert client funds to his own use, but knew  
7 or should have known that he is dealing improperly with client property and  
8 caused injury to a client.  
9

11 In Count Five of the Complaint, the State Bar alleged that Respondent  
12 failed to cooperate with the State Bar's investigation of Respondent's conduct.  
13 Although Respondent failed to respond to the State Bar's written requests for  
14 information for the matters set forth as Counts One, Two, and Three of the  
15 Complaint, Respondent did respond to the State Bar's written request for  
16 information regarding Count Four, and has cooperated fully and completely with  
17 regard to the other counts since the date of issuance of the probable cause orders  
18 for those matters. Because Respondent eventually cooperated with the  
19 disciplinary proceedings and has accepted full responsibility for his conduct, the  
20 State Bar conditionally agrees to dismiss Count Five of the Complaint in  
21 exchange for Respondent's agreement to settle these matters.  
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## ABA STANDARDS

In determining the appropriate sanction in a disciplinary matter, the analysis should be guided by the principle that the ultimate purpose of discipline is not to punish the lawyer, but to set a standard by which other lawyers may be deterred from such conduct while protecting the interests of the public and the profession. *In re Kersting*, 151 Ariz. 171, 726 P. 2d 587 (1986).

ABA *Standard* 3.0 provides that four criteria should be considered: (1) the duty violated; (2) the lawyer's mental state and (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors.

Given the conduct in this matter it is appropriate to consider *Standards* 4.1, 4.4, and 6.2. Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. *Standard* 4.12. Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. *Standard* 4.42(a). Suspension is also appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. *Standard* 6.22.

As the *Standards* do not account for multiple charges of misconduct, the

1 ultimate sanction imposed should at least be consistent with the sanction for the  
2 most serious instance of misconduct among a number of violations. *Standards*,  
3 Theoretical Framework at pg. 6; *Matter of Redeker*, 177 Ariz. 305, 868 P.2d. 318  
4 (1994).  
5

6 Respondent's abuse of his trust account by using client and third-party  
7 funds to his own use and to cover obligations owed to other clients determines the  
8 appropriate sanction in this case. See Tender at ¶¶ 15,16. As explained below,  
9 Respondent's personal and emotional problems caused him to neglect his  
10 practice. See Exhibit A Joint Memo, Respondent's Submittal in Support of  
11 Mitigation. Respondent eventually ran out of money and used unearned client  
12 funds and funds subject to claims of a third party medical service provider for  
13 living expenses. Respondent eventually became homeless and returned to his  
14 family home in Columbia, Missouri, in May 2003. Respondent is currently  
15 unemployed and indigent.  
16  
17  
18

19 Based on the foregoing, the presumptive sanction for the admitted conduct  
20 is suspension. After determining the presumptive sanction, it is appropriate to  
21 evaluate factors enumerated in the *Standards* that justify an increase or decrease  
22 in the presumptive sanction.  
23  
24  
25

1                                    **AGGRAVATING AND MITIGATING FACTORS**

2                    This Hearing Officer then considered aggravating and mitigating  
3 factors in this case, pursuant to *Standards* 9.22 and 9.32, respectively. The parties  
4 agree that two factors are present in aggravation:  
5

6                    1. (b) dishonest or selfish motive - A selfish or dishonest motive is inherent  
7 to conversion of trust account funds. Respondent admits that he was wrong to use  
8 client and third-party monies for living expenses. He claims that he did not  
9 intend to injure his clients and Dr. Kirsten, but that as a consequence of his  
10 personal or emotional problems he failed to identify more appropriate means of  
11 satisfying his immediate personal needs; and,  
12

13                    2. (d) multiple offenses - In this disciplinary proceeding, Respondent  
14 neglected two client matters and converted \$2,359.51 of client or third-party  
15 funds to his own use through multiple charges from his client trust account.  
16

17                    The parties agree that there are three factors present in mitigation:  
18

19                    1. (a) absence of a prior disciplinary record;

20                    2. (c) personal or emotional problems - Respondent was admitted in  
21 Missouri in 1995 and in Arizona on October 25, 1999. Respondent started his  
22 solo practice in January 2001. Respondent began experiencing successive panic  
23 attacks shortly after he began his solo practice. Respondent admits that he  
24 suffered from emotional problems when the conduct occurred. See Exhibit A  
25

1 Joint Memo.

2 Respondent's emotional problems were exacerbated by his divorce from  
3 his wife of eleven years in January 2001. Respondent did not want the divorce  
4 and the emotional toil of the separation was overwhelming for him. Following  
5 the divorce, Respondent shared joint custody of his son. Respondent's former  
6 wife was then diagnosed with cancer and Respondent was required to assume full  
7 responsibility for his son. The panic attacks became so severe that Respondent  
8 was unable to venture far from his home. The panic attacks hindered his ability  
9 practice law as he had in the years before he opened his solo practice.  
10

11  
12 In June 2002, Respondent's father suffered from a heart attack requiring  
13 Respondent's temporary return to Missouri. While in Missouri, Respondent  
14 missed the June 17, 2002 telephone hearing described to in Count One of the  
15 Tender. See Tender at ¶ 3. Respondent continued to suffer from panic attacks  
16 and complications from the medication that he was taking that left him feeling  
17 exhausted and oppressed by the actions of others.  
18

19  
20 Respondent denies that he was ever addicted to drugs or alcohol during the  
21 time of the conduct described in this discipline proceeding. Respondent reports,  
22 however, that his prescription medicines, Zoloft and Prozac, left him "disjointed  
23 and unable to perform in a satisfactory manner."  
24

25 Respondent reports that he returned to Missouri in summer 2003, and

1 through the assistance of a support group of family and friends he has succeeded  
2 in freeing himself from the prescription medicines that he was taking for his panic  
3 attacks. He has experienced no panic attacks since his return to Missouri.  
4 Respondent is recovering from surgery on his knee in November 2003 and  
5 intends to begin looking for work, once he is able to walk or sit for sustained  
6 periods of time. Respondent recognizes that he will not be authorized to practice  
7 law in the State of Arizona during the term of his suspension.  
8  
9

10 Respondent says his emotional and personal problems have left him  
11 "essentially homeless and penniless" and unable to repay the unearned fees and  
12 money that he owes to his former clients and Dr. Kirsten. Respondent states that  
13 he is willing to begin repaying these obligations immediately upon securing  
14 employment; and,  
15

16 3. (e) full and free disclosure to disciplinary board or cooperative attitude  
17 toward proceedings - Respondent failed to timely respond in writing to the Bar's  
18 initial screening letters for Counts One, Two, and Three of the Complaint.  
19 However, since receipt of the State Bar's screening letters for the conduct  
20 described in Count Four, Respondent fully and completely cooperated with the  
21 State Bar in this disciplinary proceeding and has fully and freely admitted the  
22 wrongfulness of his conduct.  
23  
24  
25

1 The aggravation/mitigation analysis for this matter is dominated by the fact  
2 that Respondent acted from a selfish or dishonest motive. However, Respondent  
3 recently opened his solo law practice at the time his misconduct occurred and  
4 suffered from personal and emotional problems. Respondent accepts full  
5 responsibility for his actions. Respondent claims that he has been unable to  
6 restore unearned fees to his clients and repay Dr. Kirsten for the services he  
7 provided because he is indigent. Respondent has filed for bankruptcy. See  
8 Exhibit A. Respondent states that as soon as he is able to secure employment he  
9 will begin paying back to his former clients and Dr. Kirsten.  
10  
11

12 Upon examination of the aggravating and mitigating factors, and for the  
13 purpose of settling these matters, it appears that long-term suspension is  
14 appropriate. Respondent has demonstrated that personal and emotional problems  
15 contributed to his conduct. However, Respondent has not demonstrated that his  
16 personal and emotional problems caused him to abuse funds in his client trust  
17 account. Respondent has no history of prior discipline. In view Respondent's  
18 cooperative attitude, suspension from the practice of law for three and one-half  
19 years, with restitution, and two years of probation is an appropriate sanction in  
20 this matter.  
21  
22  
23

#### 24 PROPORTIONALITY REVIEW

25 To have an effective system of professional sanctions, there must be



1 internal consistency, and it is appropriate to examine sanctions imposed in cases  
2 that are factually similar. *In re Struthers*, 179 Ariz. 216, 226, 877 P.2d 789, 799  
3 (1994); *In re Levine*, 174 Ariz. 146, 174-75, 847 P.2d 1093, 1121-22 (1993). To  
4 achieve proportionality, discipline must be tailored to the facts of each case. *In re*  
5 *Wolfram*, 174 Ariz. 49, 59, 847 P.2d 94, 104 (1993).

7  
8 **Discipline Based on Conversion of Client Funds  
and Neglect or Abandonment**

9 The proposed sanction in these matters is consistent with discipline of  
10 attorneys for conversion of client funds and neglect of client matters.

11  
12 In *Matter of Camacho*, SB 96-0079-D (1997), the attorney was disbarred  
13 after he converted \$3045.75 settlement funds to his own use, intentionally misled  
14 a client about disposition of case, and agreed to settlement without client's  
15 consent. Although the lawyer repaid the settlement funds to the Medicare, all  
16 aggravating factors were found to apply, including prior disciplinary record and  
17 failure to cooperate with the State Bar by failure to answer the Complaint and  
18 requesting a continuance to secure assistance of counsel at the disciplinary  
19 proceeding. The mitigating factors were remorse, and depression.

20  
21  
22 In *Matter of Hovell*, SB-02-0020-D (2002), the lawyer was disbarred with  
23 six months of probation including participation in LOMAP and an order of  
24 restitution of \$77,133.53. Discipline was imposed on five counts of misconduct  
25 including: settlement of a case without the consent of client, failure to deliver

1 settlement proceeds to the client; failure to disburse funds due to another attorney;  
2 failure to provide clients with an accounting of costs deducted from a recovery;  
3 and, failure to reimburse an expert witness. Aggravating factors included  
4 dishonest or selfish motive, pattern of misconduct, multiple offenses, failure to  
5 cooperate, substantial experience, and indifference to restitution. Mitigating  
6 factors included no prior disciplinary history and emotional problems.  
7

8       In *Matter of Turnage*, SB-01-0120-D (2001), the lawyer was suspended  
9 from the practice of law for four years and ordered to pay restitution in the  
10 amount of \$350.00. The discipline was imposed on eight counts including failure  
11 to provide diligent representation in five cases, failure to respond to inquiries of  
12 the State Bar in one case, failure to communicate with the client in another case,  
13 and failure to comply with an order of court resulting in dismissal of another case  
14 and three violations of the trust account rules. The court found that *Standards*  
15 4.12 and 6.22 applied. Aggravating factors included prior disciplinary offenses,  
16 pattern of misconduct, multiple offenses, failure to cooperate, and substantial  
17 experience in the practice of law. Mitigating factors included personal and  
18 emotional problems including alcoholism, timely and good faith effort to make  
19 restitution, and full and free disclosure and cooperative attitude after formal  
20 proceedings were filed.  
21  
22  
23  
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25       In *Matter of Torosian*, SB-00-0100-D (2001), the lawyer was suspended

1 from the practice of law for four years and given two years probation for  
2 receiving a check for settlement of his sister's personal injury matter and failing  
3 to disburse the funds to his client and the medical provider. The lawyer used  
4 settlement funds to satisfy his gambling addiction. The hearing officer  
5 recommended disbarment. Although the Disciplinary Commission found that  
6 disbarment was appropriate, mitigating factors, including absence of prior  
7 disciplinary record, personal and emotional problems, cooperative attitude, and  
8 inexperience in the practice of law resulted in imposition of the four-year  
9 suspension. The Disciplinary Commission found that suspension was appropriate  
10 even though there was no causal connection between the lawyer's emotional  
11 problems and the misconduct.  
12  
13  
14

15 Disbarment is not appropriate for these matters. Unlike Camacho, all of  
16 the aggravating factors do not apply to Respondent in this case. Also, Camacho  
17 intentionally misled his clients and failed to cooperate with the disciplinary  
18 process and had a disciplinary history. Respondent's case is distinguishable from  
19 Hovell because the Hovell engaged in a pattern of misconduct involving much  
20 greater amounts of converted funds, had substantial experience in the practice of  
21 law, had a disciplinary history, and refused to cooperate with the disciplinary  
22 proceedings.  
23  
24

25 Long-term suspension is appropriate for Respondent. The conduct in the

1 instant case is similar to that in Torosian. The presumptive sanction in Torosian  
2 was disbarment. Although the hearing officer recommended disbarment, the  
3 Disciplinary Commission recommended that Torosian be suspended for four  
4 years on one count of conversion of client funds. Neither Torosian nor  
5 Respondent engaged in a pattern of misconduct. For the purposes of settlement,  
6 the State Bar agrees that suspension is the presumptive sanction in this case. The  
7 nature of the Respondent's misconduct is similar to Torosian's and long-term  
8 suspension of Respondent is appropriate.  
9  
10

11 The recommended disposition of this case is also consistent with Turnage.  
12 The presumptive sanction in Turnage was suspension. Turnage was suspended  
13 for four years. The Turnage matters involved numerous instances of lack of  
14 diligence coupled with three violations of trust account rules. The Disciplinary  
15 Commission found that Turnage was a disbarment case because of the conversion  
16 of client funds, but that long-term suspension was appropriate in view of the  
17 mitigation. Both Turnage and Respondent were suffering from personal and  
18 emotional problems although those problems did not rise to the level of a  
19 disability as described by *Standards* 9.32(i).  
20  
21  
22

23 In view of Respondent's lack of disciplinary history and his willingness to  
24 settle this matter short of hearing, the agreed sanction of suspension from the  
25 practice of law for three and one-half (3½) years, with reinstatement conditioned

1 on: 1) restitution of unearned fees to clients and a third-party medical care  
2 provider; 2) completion of the State Bar's Trust Account Ethics Enhancement  
3 Program (TAEED); 3) participation in the State Bar's Member Assistance  
4 Program; and 4) payment of the costs, followed by a two-year term of probation  
5 including LOMAP is consistent with Turnage and Torosian.  
6

### 7 RECOMMENDATION

8  
9 The purpose of lawyer discipline is not to punish the lawyer, but to protect  
10 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859  
11 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the  
12 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.  
13 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in  
14 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361  
15 (1994).  
16

17 In imposing discipline, it is appropriate to consider the facts of the case, the  
18 American Bar Association's *Standards for Imposing Lawyer Sanctions*  
19 ("Standards") and the proportionality of discipline imposed in analogous cases.  
20 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).  
21

22 Upon consideration of the facts, application of the *Standards*, including  
23 aggravating and mitigation factors, and a proportionally analysis, this Hearing  
24 Officer recommends the following:  
25

1       1. Respondent shall be suspended from the practice of law for three and  
2 one-half (3½) years.

3       2. As a condition of reinstatement, Respondent shall:

4           a. demonstrate that he has made restitution of unearned fees to John  
5 Vardian, Gary W. Pederson, and Curtis Walker, and unpaid fees to Dr. Dennis W.  
6 Kirsten;

7           b. demonstrate participation in the Trust Account Ethics Enhancement  
8 Program (TAEHP);  
9

10          c. demonstrate participation, satisfactory to the court, in the State Bar's  
11 Members Assistance Program (MAP); and,  
12

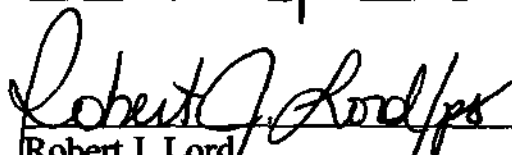
13          d. demonstrate payment of all costs that are or will be due and owing  
14 to the State Bar as a result of these proceedings as provided by Rule 65(a)(1),  
15 Ariz. R. S. Ct.  
16

17       3. Upon reinstatement, Respondent shall serve a two-year term of probation  
18 under the terms and conditions to be determined at the time of reinstatement,  
19 including participation in the State Bar's Law Office Management Assistance  
20 Program (LOMAP).  
21

22       In the event that Respondent fails to comply with any of the foregoing  
23 conditions, and the State Bar receives information, bar counsel shall file with the  
24 Hearing Officer a Notice of Non-Compliance, pursuant to Rule 60(a)5, Ariz. R.  
25

1 S. Ct. The Hearing Officer shall conduct a hearing within thirty days after receipt  
2 of said notice, to determine whether the terms of probation have been violated  
3 and if an additional sanction should be imposed. In the event there is an allegation  
4 that any of these terms have been violated, the burden of proof shall be on the State  
5 Bar of Arizona to prove non-compliance by clear and convincing evidence.  
6

7  
8 DATED this 23<sup>rd</sup> day of April, 2004.

9  
10   
11 Robert J. Lord  
12 Hearing Officer 6L

13  
14 Original filed with the Disciplinary Clerk  
15 this 23<sup>rd</sup> day of April, 2004.

16 Copy of the foregoing was mailed  
17 this 23<sup>rd</sup> day of April, 2004, to:

18 John R. Roberts, Jr.  
19 Respondent  
20 407 Longfellow Lane  
Colombia, MO 65203

21 Dana David  
22 Bar Counsel  
23 State Bar of Arizona  
24 111 West Monroe, Suite 1800  
Phoenix, AZ 85003-1742

25 by: Kel Weigand